

<b>Adversary Proceeding Cover Sheet</b>		ADVERSARY PROCEEDING NUMBER (Court Use Only)			
PLAINTIFFS ESTER M. HAILEY TRUST BY VERA L. HAILEY, TRUSTEE		DEFENDANTS JOHN DAVID HAILEY			
ATTORNEYS (FIRM NAME, ADDRESS AND TELEPHONE NO.)  CARLTON LEGAL SERVICES, PLC 118 MacTanly Place Staunton, VA 24401      (540) 213-0547		ATTORNEYS (IF KNOWN) Marshall M. Slayton, Esq. Jennifer Wagoner, Esq. Slayton Law, PLC 913 East Jefferson Street Charlottesville, Virginia 22902			
CAUSE OF ACTION (Write a brief statement of cause of action, including all U. S. Statutes involved)  Motion to Determine the Dischargeability of a Debt					
<b>NATURE OF SUIT</b> (Check the one most appropriate box only)					
<input type="checkbox"/> 424 To object or to revoke a discharge 11 U.S. C. §727 <input checked="" type="checkbox"/> 426 To determine the dischargeability of a debt 11 U.S.C. §523 <input type="checkbox"/> 434 To obtain an injunction or other equitable relief <input type="checkbox"/> 435 To Determine Validity, Priority or Extent of a Lien or Other Interest in Property		<input type="checkbox"/> 454 To Recover money or Property <input type="checkbox"/> 455 To Revoke an order of confirmation of a Chap. 11 or Chapt. 13 Plan <input type="checkbox"/> 456 To obtain a declaratory judgment relating to any of foregoing cause of action <input type="checkbox"/> 457 To subordinate any allowed claim of interest except where such subordination is provided in a plan		<input type="checkbox"/> 458 To obtain approval for the sale both the interest of the estate and of a co-owner in property <input type="checkbox"/> 459 To determine a claim or cause of action removed to a bankruptcy court <input type="checkbox"/> 498 Other (specify)	
ORIGIN OF PROCEEDINGS (Check one box only) <input checked="" type="checkbox"/> 1. Original Proceeding <input type="checkbox"/> 2. Removed Proceeding <input type="checkbox"/> 3. Reinstated or Reopened <input type="checkbox"/> 4. Transferred from Another Bankruptcy Court				<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23	
DEMAND N/A	NEAREST THOUSAND \$0.00	OTHER RELIEF SOUGHT: Determine dischargeability of a debt			<input type="checkbox"/> JURY DEMAND
<b>BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES</b>					
NAME OF DEBTOR(S) JOHN DAVID HAILEY		BANKRUPTCY CASE NO. 22-50204			
DISTRICT IN WHICH CASE IS PENDING  Western District of Virginia		NAME OF JUDGE  Honorable Rebecca B Connolly, Judge			
DIVISIONAL OFFICE Harrisonburg, Virginia					
<b>RELATED ADVERSARY PROCEEDING (IF ANY)</b>					
PLAINTIFF		DEFENDANT		ADVERSARY PROCEEDING NO.	
DISTRICT		DIVISIONAL OFFICE		NAME OF JUDGE	
FILING FEE (Check one box only)		<input checked="" type="checkbox"/> Fee attached <input type="checkbox"/> Fee Not Required <input type="checkbox"/> Fee is Deferred			
Date 8/15/2022	Print Name Roland S. Carlton, Jr., Esq.			Signature of Attorney (Or Plaintiff) <u>/s/ Roland S. Carlton, Jr.</u>	

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
HARRISONBURG DIVISION**

IN RE:           JOHN DAVID HAILEY  
*Debtor*

**COMPLAINT  
MOTION TO DETERMINE THE  
DISCHARGEABILITY OF A DEBT**

ESTER M. HAILEY TRUST,  
by and through VERA L.HAILEY, TRUSTEE  
*Plaintiff*

Case number: 22-50204

V.  
JOHN DAVID HAILEY  
*Defendant*

COMES NOW the Plaintiff, the Ester M. Hailey Trust, by and through Vera L. Hailey, Trustee, by counsel, pursuant to 11 U.S.C. §523(a)(4) and 11 U.S.C. 523(a)(6), and pursuant to Bankruptcy Rule 7001(6), and moves the Court to enter an Order holding that the debt of approximately \$24,819.87, plus interest, fees & attorney fees, to be nondischargeable, in support of which plaintiff states as follows:

1.       This Court has jurisdiction over this proceeding pursuant to 28 U.S.C §157 and 28 U.S.C. §1334 and this matter is a core proceeding.
2.       That, pursuant to the U.S. Supreme Court Decision in Stern v. Marshall, 131 S.Ct. 2594 (2011), Plaintiff requests a final decision on the merits of this motion.
3.       The Debtor John David Hailey has filed a chapter 13 bankruptcy petition on or about May 13, 2022.
4.       This Court has not entered an Order confirming Debtor's chapter 13 plan.
5.       Ester M. Hailey, mother of both the plaintiff and defendant, passed away on November 1, 2017. (Exhibit 1).

6. According to the Last Will and Testament of Ester M. Hailey, Defendant John David Hailey was appointed Trustee of the Ester M. Hailey Trust created by the Will. (Exhibit 2)
7. On or about November 9, 2018, while acting as the Trustee of the Ester M. Hailey Trust, Defendant John David Hailey withdrew \$24,819.87 from the bank account of the Ester M. Hailey Trust without preparing any documentation or receipt explaining the reason for which the money was withdrawn. (Exhibit 3)
8. The Augusta County Court, by Order entered August 2, 2019, removed John David Hailey as Trustee of the Ester M. Hailey Trust for failing, e.g., to assert a meritorious defense to the claims of the Complaint filed by Vera L. Hailey, *et al.*, in said Court. (Exhibit 4) Vera L. Hailey was appointed Trustee of the Ester M. Hailey Trust. (Exhibit 4).
9. By and through the actions of withdrawing \$24,819.87 without providing a meritorious explanation to the Augusta County Circuit Court and Vera L. Hailey, current Trustee of the Ester M. Hailey Trust, Defendant John David Hailey has committed fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny, and, accordingly, this debt owed to Ester M. Hailey Trust should be excepted from discharge pursuant to 11 U.S.C. §523(a)(4).
10. By and through the actions of withdrawing \$24,819.87 without providing a meritorious explanation to the Augusta County Circuit Court and Vera L. Hailey, current Trustee, Defendant John David Hailey has committed willful and malicious injury by the debtor to another entity or to the property of another entity, and this debt owed to the Ester M. Hailey Trust should be excepted from discharge pursuant to 11 U.S.C. §523(a)(6).

11. Furthermore, Plaintiff should be granted relief from the automatic stay imposed by 11 U.S.C. §362 to permit Plaintiff to exercise state court non-bankruptcy options to pursue the debt set forth above subsequent to the Court holding the debt is excepted from discharge.

WHEREFORE, Plaintiff prays that the Court enter an Order holding that the debt of \$24,819.87, plus interest, fees, and attorney fees, be excepted from discharge pursuant to either 11 U.S.C. §523(a)(4), 11 U.S.C. §523(a)(6), or both, and the Court further enter an Order granting Plaintiff relief from the automatic stay imposed by 11 U.S.C. §362 to permit Plaintiff to exercise state court non-bankruptcy options.

Date Mailed: 8/15/2022

/s/ Roland S. Carlton, Jr.

Counsel

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**CERTIFICATE**

I, Roland S. Carlton, Jr., Esq., do hereby certify that a true and accurate copy of this Complaint Motion to Determine the Dischargeability of a Debt, was delivered by ECF and email on August 15, 2022 to:

Marshall Moore Slayton, Esq.  
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/s/ Roland S. Carlton, Jr.  
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Roland S. Carlton, Jr., Esq.